IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1244 of 2006

Dattaji Ramkrishna Bhosle &ors. .. Petitioners

versus

Raghunath Bajirao Bhosle & ors. .. Respondents

...

Ms.A.R.S. Baxi for the petitioners.

CORAM : D.G. KARNIK, J

DATED : 1st March 2006.

P.C.:

1. This Writ Petition is directed against an order dated 8th November 2005 passed on an application filed by the defendant at Exhibit-46 rejecting the application for stay of the suit.

2. According to the petitioner, the issues involved in this suit are required to be decided by the authorities constituted under section 36B of the Bombay Prevention of Fragmentation and Consolidation of

Holdings Act 1947 (for short "the Act") for which a reference is required to be made . Therefore, the application was made for stay of the suit.

3. Section 36B of the Act provides that if the suit instituted in the Civil Court involves any issues which are required to be decided or dealt with by any authority competent to decide or deal with such issued under the Act, the Civil Court shall stay the suit and refer such issue to the competent authority for determination. What is required to be done under section 36B is therefore not to simply stay the suit but to refer the issue which is required to be decided by the authority under the Act to such authority. Learned counsel for the petitioner states that issues have not yet been framed in the suit. It is therefore not possible to ascertain whether any of the issues that may arise in the suit is required to be heard and decided by any authority under the Act. Until the issues are framed, there can also be no order for reference for decision on any issue to any authority under the Act. The application Exhibit-46 was thus clearly premature. The suit could not have been stayed on the basis of the application Exhibit-46.

4. Hence, Writ Petition is rejected.

(D.G. KARNIK, J)